

Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 198

SENATE BILL 1173

AN ACT

AMENDING SECTIONS 36-509 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO
MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-509, Arizona Revised Statutes, is amended to
3 read:

4 36-509. Confidential records

5 A. All information and records obtained in the course of evaluation,
6 examination or treatment shall be kept confidential and not as public
7 records, except as the requirements of a hearing pursuant to this chapter may
8 necessitate a different procedure. Information and records may only be
9 disclosed, pursuant to rules established by the department, to:

10 1. Physicians and providers of health, mental health or social and
11 welfare services involved in caring for, treating or rehabilitating the
12 patient.

13 2. Individuals to whom the patient has given consent to have
14 information disclosed.

15 3. Persons legally representing the patient, and in such case, the
16 department's rules shall not delay complete disclosure.

17 4. Persons authorized by a court order.

18 5. Persons doing research or maintaining health statistics, provided
19 that the department establishes rules for the conduct of such research as
20 will ensure the anonymity of the patient.

21 6. The state department of corrections in cases where prisoners
22 confined to the state prison are patients in the state hospital on authorized
23 transfers either by voluntary admission or by order of the court.

24 7. Governmental or law enforcement agencies if necessary to secure the
25 return of a patient who is on unauthorized absence from any agency where the
26 patient was undergoing evaluation and treatment.

27 8. Family members actively participating in the patient's care,
28 treatment or supervision. An agency or nonagency treating professional may
29 only release information relating to the person's diagnosis, prognosis, need
30 for hospitalization, anticipated length of stay, discharge plan, medication,
31 medication side effects and short-term and long-term treatment goals.

32 9. A state agency that licenses health professionals pursuant to title
33 32, chapter 13, 15, 17 or 19.1 and that requires these records in the course
34 of investigating complaints of professional negligence, incompetence or lack
35 of clinical judgment.

36 10. The department of education or school district of residence of a
37 person between three and twenty-two years of age for whom the information is
38 necessary in order to provide educational services required by the
39 individuals with disabilities education act (20 United States Code sections
40 1400 through 1415). The information provided shall be IS limited to
41 evaluation and treatment information that affects the educational programming
42 and placement decisions for the patient.

43 11. A governmental agency or a competent professional, as defined in
44 section 36-3701, in order to comply with chapter 37 of this title.

45 12. An agent appointed pursuant to chapter 32 of this title.

1 13. Human rights committees established pursuant to title 41, chapter
2 35. Any information released pursuant to this paragraph shall comply with
3 the requirements of section 41-3804 and applicable federal law and shall be
4 released without personally identifiable information unless the personally
5 identifiable information is required for the official purposes of the human
6 rights committee. Case information received by a human rights committee
7 shall be maintained as confidential. FOR THE PURPOSES OF THIS PARAGRAPH,
8 "personally identifiable information" includes name, address, date of birth,
9 social security number, tribal enrollment number, telephone or telefacsimile
10 number, driver license number, places of employment, or school identification
11 or AND military identification number or any other distinguishing
12 characteristic that tends to identify a particular person.

13 14. THE DEPARTMENT OF PUBLIC SAFETY BY THE COURT TO COMPLY WITH THE
14 REQUIREMENTS OF SECTION 36-540, SUBSECTION N ONLY.

15 B. An agency or nonagency treating professional shall release
16 information pursuant to subsection A, paragraph 8 of this section only after
17 the treating professional or that person's designee interviews the person
18 undergoing treatment or evaluation to determine whether or not release is in
19 that person's best interests. A decision to release or withhold information
20 is subject to review pursuant to section 36-517.01. The treating agency
21 shall record the name of any person to whom any information is given.

22 Sec. 2. Section 36-540, Arizona Revised Statutes, is amended to read:
23 36-540. Court options

24 A. If the court finds by clear and convincing evidence that the
25 proposed patient, as a result of mental disorder, is a danger to himself
26 SELF, is a danger to others, is persistently or acutely disabled or is
27 gravely disabled and in need of treatment, and is either unwilling or unable
28 to accept voluntary treatment, the court shall order the patient to undergo
29 one of the following:

30 1. Treatment in a program of outpatient treatment.

31 2. Treatment in a program consisting of combined inpatient and
32 outpatient treatment.

33 3. Inpatient treatment in a mental health treatment agency, in a
34 veterans administration hospital pursuant to article 9 of this chapter, in
35 the state hospital or in a private hospital, if the private hospital agrees,
36 subject to the limitations of section 36-541.

37 B. The court shall consider all available and appropriate alternatives
38 for the treatment and care of the patient. The court shall order the least
39 restrictive treatment alternative available.

40 C. The court may order the proposed patient to undergo outpatient or
41 combined inpatient and outpatient treatment pursuant to subsection A,
42 paragraph 1 or 2 of this section if the court:

43 1. Determines that all of the following apply:

44 (a) The patient does not require continuous inpatient hospitalization.

1 (b) The patient will be more appropriately treated in an outpatient
2 treatment program or in a combined inpatient and outpatient treatment
3 program.

4 (c) The patient will follow a prescribed outpatient treatment plan.

5 (d) The patient will not likely become dangerous or suffer more
6 serious physical harm or serious illness or further deterioration if the
7 patient follows a prescribed outpatient treatment plan.

8 2. Is presented with and approves a written treatment plan which THAT
9 conforms with the requirements of section 36-540.01, subsection B. If the
10 treatment plan presented to the court pursuant to this subsection provides
11 for supervision of the patient under court order by a mental health agency
12 that is other than the mental health agency that petitioned or requested the
13 county attorney to petition the court for treatment pursuant to section
14 36-531, the treatment plan must be approved by the medical director of the
15 mental health agency that will supervise the treatment pursuant to subsection
16 E of this section.

17 D. An order to receive treatment pursuant to subsection A, paragraph
18 1 or 2 of this section shall not exceed three hundred sixty-five days. The
19 period of inpatient treatment under a combined treatment order pursuant to
20 subsection A, paragraph 2 of this section shall not exceed the maximum period
21 allowed for an order for inpatient treatment pursuant to subsection F of this
22 section.

23 E. If the court enters an order for treatment pursuant to subsection
24 A, paragraph 1 or 2 of this section, all of the following apply:

25 1. The court shall designate the medical director of the mental health
26 treatment agency that will supervise and administer the patient's treatment
27 program.

28 2. The medical director shall not use the services of any person,
29 agency or organization to supervise a patient's outpatient treatment program
30 unless the person, agency or organization has agreed to provide such THESE
31 services in the individual patient's case and unless the department has
32 determined that the person, agency or organization is capable and competent
33 to do so.

34 3. The person, agency or organization assigned to supervise an
35 outpatient treatment program or the outpatient portion of a combined
36 treatment program shall be notified at least three days before a referral.
37 The medical director making the referral and the person, agency or
38 organization assigned to supervise the treatment program shall share relevant
39 information about the patient to provide continuity of treatment.

40 4. During any period of outpatient treatment under subsection A,
41 paragraph 2 of this section, if the court, upon ON motion by the medical
42 director of the patient's outpatient mental health treatment facility,
43 determines that the patient is not complying with the terms of the order or
44 that the outpatient treatment plan is no longer appropriate and the patient
45 needs inpatient treatment, the court, without a hearing and based upon ON the

1 court record, the patient's medical record, the affidavits and
2 recommendations of the medical director, and the advice of staff and
3 physicians familiar with the treatment of the patient, may enter an order
4 amending its original order. The amended order may alter the outpatient
5 treatment plan or order the patient to inpatient treatment pursuant to
6 subsection A, paragraph 3 of this section. The amended order shall not
7 increase the total period of commitment originally ordered by the court or,
8 when added to the period of inpatient treatment provided by the original
9 order and any other amended orders, exceed the maximum period allowed for an
10 order for inpatient treatment pursuant to subsection F of this section. If
11 the patient refuses to comply with an amended order for inpatient treatment,
12 the court may authorize and direct a peace officer, on the request of the
13 medical director, to take the patient into protective custody and transport
14 the patient to the agency for inpatient treatment. When reporting to or
15 being returned to a treatment agency for inpatient treatment pursuant to an
16 amended order, the patient shall be informed of his THE PATIENT'S right to
17 judicial review and his THE PATIENT'S right to consult with counsel pursuant
18 to section 36-546.

19 5. During any period of outpatient treatment under subsection A,
20 paragraph 2 of this section, if the medical director of the outpatient
21 treatment facility in charge of the patient's care determines, in concert
22 with the medical director of an inpatient mental health treatment facility
23 who has agreed to accept the patient, that the patient is in need of
24 immediate acute inpatient psychiatric care because of behavior that is
25 dangerous to himself SELF or to others, the medical director of the
26 outpatient treatment facility may order a peace officer to apprehend and
27 transport the patient to the inpatient treatment facility pending a court
28 determination on an amended order under paragraph 4 of this subsection. The
29 patient may be detained and treated at the inpatient treatment facility for
30 a period of no more than forty-eight hours, exclusive of weekends and
31 holidays, from the time that the patient is taken to the inpatient treatment
32 facility. The medical director of the outpatient treatment facility shall
33 file the motion for an amended court order requesting inpatient treatment no
34 later than the next working day following the patient being taken to the
35 inpatient treatment facility. Any period of detention within the inpatient
36 treatment facility pending issuance of an amended order shall not increase
37 the total period of commitment originally ordered by the court or, when added
38 to the period of inpatient treatment provided by the original order and any
39 other amended orders, exceed the maximum period allowed for an order for
40 inpatient treatment pursuant to subsection F of this section. If a patient
41 is ordered to undergo inpatient treatment pursuant to an amended order, the
42 medical director of the outpatient treatment facility shall inform the
43 patient of the patient's right to judicial review and to consult with an
44 attorney pursuant to section 36-546.

1 F. The maximum periods of inpatient treatment which THAT the court may
2 order, subject to the limitations of section 36-541, are as follows:

3 1. Ninety days for a person found to be a danger to self.

4 2. One hundred eighty days for a person found to be a danger to
5 others.

6 3. One hundred eighty days for a person found to be persistently or
7 acutely disabled.

8 4. Three hundred sixty-five days for a person found to be gravely
9 disabled.

10 G. If, on finding that the patient is gravely disabled, the court also
11 finds that the evidence indicates that the patient is or may be in need of
12 guardianship or conservatorship, or both, the court shall order an
13 investigation concerning the need for a guardian or conservator, or both, and
14 shall appoint a suitable person or agency to conduct the investigation. The
15 appointee may include the mental health treatment agency that is providing
16 inpatient or outpatient treatment, a court appointed visitor or the public
17 fiduciary if there is no person willing and qualified to act in that
18 capacity. The court shall give notice of the appointment to the appointee
19 within three days of the appointment. The appointee shall submit the report
20 of the investigation to the court within twenty-one days. The report shall
21 include recommendations as to who should be guardian or who should be
22 conservator, or both, and a report of the findings and reasons for the
23 recommendation. If the investigation and report so indicate, the court shall
24 order the appropriate person to submit a petition to become the guardian or
25 conservator, or both, of the patient.

26 H. If, on finding that a patient is gravely disabled, the court also
27 finds that the patient is in need of immediate guardianship for the purpose
28 of protection of the patient or for the purpose of carrying out alternatives
29 to court-ordered treatment, the court may appoint as a temporary guardian a
30 suitable person or the public fiduciary, if there is no person qualified and
31 willing to act in that capacity.

32 I. If, on finding that a patient is gravely disabled, the court also
33 learns that the patient has a guardian appointed under title 14, the court
34 may with notice impose upon ON the existing guardian additional duties
35 pursuant to section 14-5312.01.

36 J. The court shall file a report as part of the court record on its
37 findings of alternatives for treatment.

38 K. Treatment shall not include psychosurgery, lobotomy or any other
39 brain surgery without specific informed consent of the patient or the
40 patient's legal guardian and an order of the superior court in the county in
41 which the treatment is proposed, approving with specificity the use of the
42 treatment.

43 L. The medical director or any person, agency or organization used by
44 the medical director to supervise the terms of an outpatient treatment plan
45 shall not be held civilly liable for any acts committed by a patient while

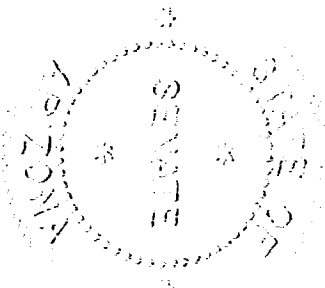
1 on outpatient treatment if the medical director, person, agency or
2 organization has in good faith followed the requirements of this section.

3 M. A peace officer who in good faith apprehends and transports a
4 patient to an inpatient treatment facility on the order of the medical
5 director of the outpatient treatment facility pursuant to subsection E,
6 paragraph 5 of this section shall not be subject to civil liability.

7 N. IF A PERSON HAS BEEN FOUND, AS A RESULT OF A MENTAL DISORDER, TO
8 CONSTITUTE A DANGER TO SELF OR OTHERS AND THE COURT ENTERS AN ORDER FOR
9 TREATMENT PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT SHALL GRANT
10 ACCESS TO THE PERSON'S NAME, DATE OF BIRTH, SOCIAL SECURITY NUMBER, DATE OF
11 COMMITMENT AND, ON TERMINATION OF TREATMENT BY COURT ORDER, DATE OF
12 TERMINATION TO THE DEPARTMENT OF PUBLIC SAFETY TO COMPLY WITH THE
13 REQUIREMENTS OF TITLE 13, CHAPTER 31 AND TITLE 32, CHAPTER 26.

APPROVED BY THE GOVERNOR MAY 9, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2002.



Passed the House May 2, 2002,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 27, 2002,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

[Signature]
President of the Senate

Charmine Billings
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2002,

at 12:30 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 9 day of

May, 2002,

at 1:56 o'clock P M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 2002,

at 3:27 o'clock P M.

[Signature]
Secretary of State

S.B. 1173